IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.96 of 2005
Date of decision:23.11.2006

Smt.Jaswinder Kaur Kooner

....Petitioner

versus

Commissioner of Income Tax (Appeals), Jalandhar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. OP Goyal, Sr. Advocate with
Ms. Mamta Bhatti, Advocate, for the appellant.

Dr. N.L.Sharda, Advocate, for the respondent.

JUDGMENT:

This appeal has been preferred by the assessee against the order dated 26.8.2004 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, 'the Tribunal') in ITA No.287/(ASR)/2001, for the assessment year 1993-94, proposing following substantial questions of law:-

> "i) Whether the compliance of Section 127 of the Income Tax Act, 1961 has been made in the present case?
>
> ii) Who would have the jurisdiction to decide the case of the appellant and whether the provisions of Section 127 in all its facets have been complied with?"

The Assessing Officer made an addition of Rs.2,44,243/- rejecting the plea of the assessee that investment in construction of the house was out of agricultural income and not unexplained income. The CIT (A) partly allowed the appeal but upheld addition of Rs.1 lac. On further appeal, the Tribunal remanded the matter to the Assessing officer.

The assessee had also raised a plea that order of transfer of jurisdiction under section 127 of the Income Tax Act, 1961 (for short, 'the

Act') being void, re-assessment proceedings were void on that ground. The Tribunal followed its earlier order dated 30.6.2004 in the case of the assessee (ITA 80 and 81 of 2000). In the said order, the Tribunal observed that the assessee had the knowledge of the order and did not challenge the same at the relevant forum and that the same could not be set aside in assessment proceedings by the Assessing Officer or the CIT(A).

Only question which arises for consideration is whether the assessee could be allowed to challenge an order of transfer under section 127 of the Act in assessment proceedings.

Scope of assessment proceedings under the Act is confined to determining income of the assessee and liability to tax. The officer to whom jurisdiction is transferred and who derives jurisdiction from such an order, cannot question validity of such an order. If the assessee is aggrieved by an order of transfer, remedy of the assessee is to challenge such an order in independent proceedings either before higher administrative authorities as per the Act or in any independent proceedings by way of writ petition or otherwise. If no such challenge is made at the initial stage, the issue cannot be raised in appeal against the assessment order.

In **Pannalal Binjraj and another v. The Union of India and others,** (1957) 31 ITR 565, the Hon'ble Supreme Court observed while upholding power of transfer that inconvenience to the assessee or likelihood of misuse of provision could not be a ground to declare the said provision to be void but if there was abuse of the power, appropriate remedy could be taken. Relevant observations are:-

> "It follows, therefore, that section 5(7A) of the Act is not violative of Article 14 of the Constitution and also does not impose any unreasonable restriction on the fundamental right to carry on trade or business enshrined in Article 19(1)(g) of the Constitution. If there is any abuse of power it can be remedied by appropriate action either under Article 226 or under Article 32 of the Constitution and what can be struck down is not the provision contained in section 5(7A) of the Act but the order passed thereunder which may be mala fide or violative of these fundamental rights. This challenge of the vires of section 5(7A) of the Act, therefore, fails."

In **M/s Ajantha Industries and others v. Central Board of Directo Taxes, New Delhi and others,** AIR 1976 SC 437, it was observed by the Hon'ble Supreme Court:-

> "16.Mr. Sharma also drew our attention to a deicion of this Court in S. Narayanappa v. Commr. Of Income-tax, Bangalore, (1967) 63 ITR 219 = (AIR 1967 SC 523) where this Court was dealing with Section 34 of the Old Act. It is clear that there is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under Section 34 must also be communicated to the assessee. The Income-tax Officer need not communicate to the assessee the reasons which led him to initiate the proceedings under Section 34. The case under Section 34 is clearly distinguishable from that of a transfer order under Section 127(1) of the Act. When an order under Section 34 is made the aggrieved assessee can agitate the matter in appeal against the assessment order, but an assessee against whom an order of transfer is made has no such remedy under the Act to question the order of transfer. Besides, the aggrieved assessee on receipt of the notice under Section 34 may even satisfy the Income-tax Officer that there were no reasons for reopening the assessment. Such an opportunity is not available to an assessee under Section 127(1) of the Act. The above decision is, therefore, clearly distinguishable."

The assessee having not raised the objection as to jurisdiction at the appropriate time before the Assessing Officer cannot be permitted to take up the issue in appeal.

In view of the above, no substantial question of law arises.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

November 23, 2006 (Rajesh Bindal)
'gs' Judge